

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Promote Policy and Program Coordination and Integration in Electric Utility Resource Planning.

Rulemaking 04-04-003
(Filed April 1, 2004)
QF Issues

Order Instituting Rulemaking to Promote Consistency in Methodology and Input Assumptions in Commission Applications of Short-run and Long-run Avoided Costs, Including Pricing for Qualifying Facilities.

Rulemaking 04-04-025
(Filed April 22, 2004)
QF Issues

**ADMINISTRATIVE LAW JUDGES' RULING
DENYING MOTION TO STRIKE FILED BY
CALIFORNIANS FOR RENEWABLE ENERGY, INC.**

This ruling denies the Californians for Renewable Energy, Inc. (CARE) motion to strike references to the California Energy Commission's (CEC) Draft 2005 Integrated Energy Policy Report (IEPR). CARE filed its motion on November 15, 2005, seeking a ruling to strike all references to the IEPR in the prepared rebuttal testimony of Thomas R. Beach on behalf of the California Cogeneration Council (CCC) and in the prepared rebuttal testimony of James A. Ross and Donald A. Schoenbeck on behalf of the Cogeneration Association of California and Energy Producers and Users Coalition (CAC/EPUC). CARE requests that all references to the IEPR be stricken on the basis that the CEC report is biased. CARE further claims that the IEPR provides the CEC Commissioner's personal opinions, or hearsay evidence, and does not provide

specific facts concerning the issues in this proceeding. CARE claims that to allow these references to the IEPR in the testimony will violate CARE's procedural and statutory due process rights.

The CCC and CAC/EPUC filed responses in opposition to the motion on November 30, 2005. In their responses, CCC and CAC/EPUC note that CARE has not met its burden of demonstrating bias on the part of the CEC in its development of the IEPR and, under the modified hearsay admissibility standard that applies in Commission proceedings, the IEPR evidence is clearly admissible. The CCC further notes that the IEPR is the sort of evidence upon which the Commission routinely relies in its decisions and therefore should be admissible under Rule 64. As an example, the CCC points out that the Commission recently relied upon the CEC's 2003 IEPR in issuing D.05-10-045.

Discussion

CARE has not justified its motion to strike all references to the CEC's Draft 2005 IEPR. Rule 64 of the Commission's Rules of Practice and Procedure provides that the Commission need not ordinarily apply the technical rules of evidence in hearings before the Commission as long as the substantial rights of the parties are preserved. As a result, the Commission need not evaluate the qualifications of the CEC to prepare the IEPR in order for the IEPR to be admissible in this proceeding. As the CCC notes, the Commission typically applies Rule 64 to allow hearsay evidence of the type presented in the CCC's rebuttal testimony. The Commission will be able to weigh the merits of opposing arguments on the issue of the validity of the IEPR recommendations.

IT IS RULED that the motion of Californian for Renewable Energy, Inc. to strike all references to the California Energy Commission's Draft 2005 Integrated Energy Policy Report in the prepared rebuttal testimony of Thomas R. Beach on behalf of the California Cogeneration Council and in the prepared rebuttal testimony of James A. Ross and Donald A. Schoenbeck on behalf of the Cogeneration Association of California and Energy Producers and Users Coalition is hereby denied.

Dated January 9, 2006, at San Francisco, California.

/s/ CAROL A. BROWN
Carol A. Brown
Administrative Law Judge

/s/ JULIE M. HALLIGAN
Julie M. Halligan
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judges' Ruling Denying Motion to Strike Filed by Californians for Renewable Energy, Inc. on all parties of record in this proceeding or their attorneys of record.

Dated January 9, 2006, at San Francisco, California.

/s/ ELVIRA T. NIZ

Elvira T. Niz

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.